

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

RANDY COOPER,

Plaintiff,

v.

Civil Action No. 2:12-7462

JAMES RUBENSTEIN,
Commissioner of Corrections, and
DAVID BALLARD,

Defendants.

MEMORANDUM OPINION AND ORDER

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who submitted her proposed findings and recommendation on March 29, 2013, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). On that same date, the magistrate judge additionally denied plaintiff's request for the appointment of counsel.

The magistrate judge recommends that the complaint be dismissed inasmuch as it fails to state a claim upon which relief can be granted and is frivolous. The magistrate judge also recommends denial of the pending motion for a temporary restraining order/injunction.

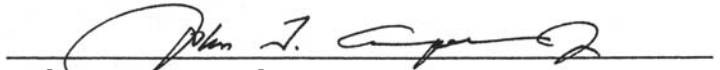
On April 12, 2013, plaintiff objected. With a single exception, the objections are not responsive to the reasons espoused by the magistrate judge for dismissal of the case and denial of the appointment of counsel. The exception is plaintiff's assertion that he has suffered an unauthorized disclosure by prison officials of a key, and intensely private, component of his medical history. In relation to that allegation, he appears to request leave to amend his complaint to identify the proper parties sued and their precise role in the allegedly unauthorized disclosure.

Based upon the foregoing, it is ORDERED that plaintiff be, and he hereby is, given leave to file an amended complaint on or before June 14, 2013. Except insofar as plaintiff may attempt to state a claim for the alleged unauthorized disclosure set forth above, the court adopts and incorporates herein the balance of the PF&R insofar as it recommends dismissal of his claims arising out of the alleged monitoring of his thoughts, dreams, imaginations and daily activity, and any official capacity claims as currently pled, all of which are hereby ORDERED dismissed. The court additionally discerns no error in the magistrate judge's separate order denying without prejudice plaintiff's request for the appointment of counsel.

The court, accordingly, ORDERS that this matter be, and hereby is, recommitted to the United States Magistrate Judge for further development under the terms of the original referral order following receipt of the plaintiff's amended complaint respecting his claim that he has suffered an unauthorized disclosure by prison officials of a key, and intensely private, component of his medical history.

The Clerk is directed to forward copies of this order to the pro se plaintiff, all counsel of record, and the United States Magistrate Judge.

DATED: May 21, 2013


John T. Copenhaver, Jr.
United States District Judge